

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

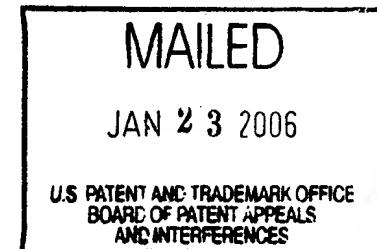
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOACHIM UNGRUH, SILVIA KROB, HENDRIK KURZAWA,
CHRISTIAN SCHMIDT, THOMAS LANGE, and ANDREAS LINDENTHAL

Appeal No. 2005-2377
Application No. 09/423,501

ON BRIEF¹



Before HAIRSTON, BLANKENSHIP, and MACDONALD, Administrative Patent Judges.
BLANKENSHIP, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 6-15, which are all the claims remaining in the application.

We affirm.

¹ Appellants' representative waived attendance at an oral hearing scheduled for November 17, 2005, via facsimile transmission filed October 26, 2005.

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BACKGROUND

The invention is directed to a method and system for administering telephone features (e.g., activation or deactivation of call forwarding) over an Internet connection. Representative claim 6 is reproduced below.

6. A method for administering performance features for a telephone subscriber, the method comprising the steps of:

 providing data terminal equipment with a display at a location undertaking the administration of the performance features;

 employing a telephone exchange containing a data base pertaining to the performance features;

 effecting an Internet connection between the data terminal equipment and an Internet server through the use of an Internet browser and a first switching-oriented application; and

 effecting a telecommunications connection between the Internet server and the telephone exchange by using a second switching-oriented application which communicates with the first switching-oriented application, wherein communication between the data terminal equipment and the telephone exchange is ultimately established for the administration of the performance features.

The examiner relies on the following reference:

An et al. (An)	6,031,904	Feb. 29, 2000
		(filed Jun. 19, 1997)

Claims 6-15 stand rejected under 35 U.S.C. § 102 as anticipated by or, in the alternative, under 35 U.S.C. § 103 as being unpatentable over An.

We refer to the Final Rejection (mailed Mar. 26, 2003) and the Examiner's Answer (mailed Jun. 18, 2004) for a statement of the examiner's position and to the

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Brief (filed Mar. 29, 2004) for appellants' position with respect to the claims which stand rejected.

OPINION

An is directed to a system that allows, as in appellants' system, telephone subscribers to update certain telephone features over the Internet. (An Abstract.) The examiner indicates, at pages 3 and 4 of the Answer, how representative claim 6 is deemed to read on the disclosure of An.

Appellants submit that An fails to disclose "employing a telephone exchange containing a database pertaining to the performance features." (Brief at 4.) Appellants allege, without elaboration, that although the service manager nodes 16 form part of PSTN (public switched telephone network) 12 of An, the nodes are "not equivalent" to the claimed "telephone exchange."

As the examiner notes, An at column 3, lines 20 through 32 teaches that "service managers" run on service manager nodes 16. The nodes are connected to, or form part of, PSTN 12 (Fig. 2). Profile repository (data base) 18 may be stored on the respective service manager node, on a machine such as a switch forming part of the PSTN, or on some other intermediate machine. We are not persuaded by appellants that An fails to teach employing a telephone exchange containing a database pertaining to the performance features within the meaning of instant claim 6.

"Anticipation is established only when a single prior art reference discloses, expressly or under principles of inherency, each and every element of a claimed invention." RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). The remainder of appellants' arguments contest the examiner's finding that the first and second "switching-oriented" applications as claimed are inherent in An, or at the least would have been obvious at the time of invention. In our estimation, the examiner sets forth a reasonable basis in the Answer as to why the "applications" are inherent or would have been obvious to use in the An system.

The first "switching-oriented application" of claim 6, combined with an Internet browser, effects an Internet connection between data terminal equipment and an Internet server. Appellants argue (Brief at 5-6) that Internet access unit 58 is shown "directly connected" to the Internet 54, referring to Figure 3 of An. We consider it unlikely that terminals 58 depicted in Figure 3 are "directly connected" to the Internet, notwithstanding the lines from the terminals to cloud ("Internet") 54 that are shown in the drawing. We also note there is no "Internet server 54" depicted in Figure 3, contrary to appellants' contention at page 6 of the Brief. In any event, Figure 2 (a different embodiment from Figure 3) shows Internet Access Unit 58 connected to Internet 54 through PSTN 12 and Internet service provider 60. Col. 4, ll. 16-56. We note in passing that instant claim 9 recites that access of the data terminal equipment to the Internet occurs via a telephone network, consistent with Figure 2 of An, and instant claim 10 recites that access occurs via a data line connection, consistent with Figure 3

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of An (and An's first paragraph of column 3). Both types of connection are thus consistent with the first "switching-oriented application" of base claim 6.

An also describes link 56 (Fig. 2) between web server 50 and service manager node 16, which may form part of a private telephone company network (col. 4, ll. 43-46). Appellants submit (Brief at 6) that "[n]o teaching or suggestion" is given that link 56 would require a second switching-oriented application that communicates with the first switching-oriented application. We consider the examiner's position, as amplified at pages 8 through 10 of the Answer, to be better founded. Communication between, for example, Internet Access Unit 58 (Fig. 2), Web Server 50, and Profile Repository 18 is necessary to effect the updating of features for the user's telephone. In addition, multiple protocol conversions are necessary in communicating between the various elements as depicted in Figure 2, as, for example, HTTP (col. 4, ll. 16-46) protocols at a user's terminal and Web Server 50, and connection to a data base (18) that is not described as web-based, with links over public and private telephone networks.

An shows all the functionality associated with the two "applications," to the extent claimed. "Under the principles of inherency, if the prior art necessarily functions in accordance with, or includes, the claimed limitations, it anticipates." MEHL/Biophile Int'l Corp. v. Milgraum, 192 F.3d 1362, 1365, 52 USPQ2d 1303, 1305 (Fed. Cir. 1999). The instant case does not concern the most common type of inherency problem; i.e., determining whether claimed characteristics of a product or apparatus are inherent in a similar product or apparatus found in the prior art. In view of the examiner's persuasive

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analysis, the disposition of this appeal reduces to determining whether the undisclosed elements in An that are necessary for communication between the expressly described elements may be fairly considered “switching-oriented” applications within the meaning of claim 6.

Appellants have not demonstrated the examiner’s position that An contains such “applications” to be in error as by, for example, demonstrating how the Internet and telecommunications connections in An might be different because An lacks the “applications.” Nor have appellants pointed to anything in their disclosure to suggest that the “applications” require something that is not found in the An system. Nor have appellants shown that the artisan would regard the “switching-oriented” applications as something different from the elements that are necessary in An for effecting communications between the disparate and separated system components that reside within their respective local environments. At best, appellants have shown that An does not use the term “switching-oriented application,” which fails to demonstrate error in the rejection. Anticipation is not an “*ipsissimis verbis*” test. In re Bond, 910 F.2d 831, 832, 15 USPQ2d 1566, 1567 (Fed. Cir. 1990).

In sum, we conclude that a reasonable case for prima facie unpatentability has been set forth for the subject matter as a whole of representative claim 6. The case stands unrebutted. We sustain the rejection of claims 6 through 15.

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CONCLUSION

The rejection of claims 6-15 under 35 U.S.C. § 102 as anticipated by or, in the alternative, under 35 U.S.C. § 103 as being unpatentable over An is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a). See 37 CFR § 1.136(a)(1)(iv).

AFFIRMED

KENNETH W. HAIRSTON
Administrative Patent Judge

HOWARD B. BLANKENSHIP
Administrative Patent Judge

ALLEN R. MACDONALD
Administrative Patent Judge

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